IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27..04..2007

C O R A M

THE HONOURABLE MR. R. BALASUBRAMANIAN
and
THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

Writ Appeal Nos.726, 1223 & 1224 of 2006,
Writ Petition Nos.28699 and 35944 of 2006

1. M. Elumalai
2. P. Mallika
3. V. Selvi .. Appellants in
4. S. Kalaiselvi W.A. No.726 of 2006

versus

1. M. Bhuvaneswari

2. The State of Tamil Nadu, rep. by the
Secretary, Health & Family Welfare Department,
Fort St. George, Chennai-9.

3. The Director of Medical Services,
Teynampet, Chennai-18.

4. The Tamil Nadu Nurses and Midwives Council,
Chennai-4.

5. Private School Nurse's Association, rep. by its
President S. Senthilnathan,
No.31, Mettu Street, Vellaimedupettai,
Tindivdanam Taluk, -604 207.
Villupuram District.

6. Tamil Nadu Govt. Trained Nurses Association,
Rep. by its State Secretary V. Arul Kumar,
Chennai.

7. M. Prabhavathi
8. M. Devaki
9. P. Nagarani
10. R. Premalatha
11. R. Nagajothi
12. V. Pargavi
13. K. Lalitha
14. G. Sumathi

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15. Devi Kamachi
16. V. Veeraramalakshmi
(R-5 impleaded as party respondent
vide order of Court dt. 23.8.2006 in .. Respondents in
WAMP. No.1582 of 2006) W.A. No.726 of 2006
17. Private Nursing School Nurses Association
rep by its President M.Padmapriya,Thiruvannamalai
(RR.6 to 17 impleaded as party respondents vide
order of Court dt.28.2.07 made in MP.1/07,2/07,
3/06,5/06 & 1589/06)

1. The State of Tamil Nadu, rep. by the
Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

2. The Director of Medical Services,
Teynampet, Chennai-18.

3. The Tamil Nadu Nurses and Midwives Council, .. Appellants in
Chennai-4. W.A. No.1223 of 2006

versus

1. M. Bhuvaneswari
2. M. Elumalai
3. P. Mallika
4. V. Selvi .. Respondents in
5. S. Kalaiselvi W.A. No.1223 of 2006
RR. 2 to 5 impleded as per the order of
Court dated 16/3/06 in WPMP.8215/06

1. The State of Tamil Nadu, rep. by the
Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

2. The Director of Medical Services, .. Appellants in
Teynampet, Chennai-18. W.A. No.1224 of 2006

versus

K. Kavitha .. Respondent in
W.A. No.1224 of 2006

1. T. Rathi
2. S. Elavarasi
3. K. Udhaya Banu
4. V. Bala
5. M. Deepa .. Petitioners in
6. D. Bharathi W.P. No.28699 of 2006

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versus

1. The State of Tamil Nadu, rep. by
   Commissioner & Secretary to Government of
   Tamil Nadu, Health & Family Welfare Department,
   Fort St. George, Chennai-9.

2. The Director of Medical Services,
   Teynampet, Chennai-18.

3. The Registrar,
   The Tamil Nadu Nurses & Midwives Council,
   Chennai-4. .. Respondents in W.P. No.28699 of 2006

M. Saroja .. Petitioners in W.P. No.35944 of 2006

versus

1. The Director,
   Rural & Medical Service,
   Teynampet, Chennai-6.

2. Joint Director,
   Health & Welfare Service,
   Teynampet, Chennai-6.

3. Director of Medical Services,
   Nursing Section, Govt. of Tamil Nadu,
   Rep. by its Secretary, Health Department,
   Secretariat, Chennai-9. .. Respondents in W.P. No.35944 of 2006

Prayer : W.A. Nos.726 and 1223 of 2006 filed under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 27.4.2006 passed in W.P. No.36932 of 2005, filed under Article 226 of constitution of India, praying for issuance of writ of mandamus directing respondents 1 and 2 to appoint the petitioner as staff Nurse.

W.A. No. 1224 of 2006 filed against the order of a learned single Judge of this Court dated 27.4.2006 passed in W.P. No.39236 of 2005, filed under Article 226 of the constitution of India praying for a writ of mandamus directing the respondents to consider the petitioner for appointment as staff nurse in the Government General Hospitals and primary Health centers under the respondents on the basis of the seniority of registration in the Tamil Nadu Nurses and midwives Council along with the personnel who have studied diploma in nursing and midwifery in the Government institution without any discrimination between the

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person who studied in the Government institution and Government recognized private institution.

W.P. No.28699 of 2006 filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to consider the petitioners for appointment of Staff Nurses in the Government General Hospitals and Primary Health Centres under the respondents on the basis of seniority of registration in the Tamil Nadu Nurses and Midwives Council on par with the candidates who underwent Nursing Course in the Government Institution or organisation without any discrimination between the persons who studied in the Government Institution and Government recognised private institution within the time framed manner.

W.P. No.35944 of 2006 filed under Article 226 of the Constitution of India praying for a writ of declaration, declaring the candidates qualifying from Private Nursing Colleges and Universities in Tamil Nadu are eligible to be appointed as Nurses in the Government Hospitals in Tamil Nadu.

For Appellants in W.A.726/2006 : Mr. N.G.R. Prasad for Mr. S. Saravana Kumar

For Appellants in W.As.1223 & 1224/2006 : Mr. R. Viduthalai, Advocate General Assisted by Mrs. Bhavani Subbarayan, Government Advocate.

For Petitioners in W.P.28699/2006 : Mr. A. Thamizharasan

For Petitioners in W.P.35944/2006 : Mr. M.V. Krishnan

For Respondents 1 & 8 in W.A.726/2006 : Mrs. Hema Sampath, Senior Counsel for Mr. R. Subramaniam

For Respondents 2 to 4 in W.A.726/2006 : Mr. R. Viduthalai, Advocate General Assisted by Mrs. Bhavani Subbarayan, Government Advocate.

For Respondent-5 in W.A.726/2006 : Mrs.Nalini Chidambaram SC for M/s.Glady's Daniel

For Respondent-6 in W.A.726/2006 : Mr. V. jeevagiridharan

For Respondent-7 in W.A.726/2006 : Mr. S. Rajendiran

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For Respondents 9 to 16 in W.A.726/2006 : Mr. T.R. Rajaraman

For R17 in WA.726/2006 :Mr.G.Rajan

For Respondent-1 in W.A.1223/2006 : Mrs. Hema Sampath, Senior Counsel for Mr. R. Subramaniam

For Respondents 2 to 5 in W.A.1223/2006 : No Appearance

For Respondent-1 in W.A.1224/2006 : Mr. R.N. Amarnath

For Respondents 1 to 3 in W.P.28699/2006 :Mr. R. Viduthalai, Advocate General Assisted by Mrs. Bhavani Subbarayan, Government Advocate.

For Respondents in W.P.35944/2006 :Mr. R. Viduthalai, Advocate General Assisted by Mrs. Bhavani Subbarayan, Government Advocate.

J U D G M E N T

Prabha Sridevan, J.

Writ Petition Nos.36932 and 39236 of 2005 were filed by the petitioners, the former for a mandamus to appoint the petitioner therein as Staff Nurse and the latter for a mandamus to consider the petitioner therein for appointment as Staff Nurse. The grievance of the petitioners was that only the persons who have studied in Government Nursing Colleges (Government Nurses in short) and have got a diploma had been called for interviews and appointed in the Government General Hospitals and Primary Health Centres, to the exclusion of other persons who have studied in private institutions (Private Nurses in short), and this is violative of Articles 14, 16 and 21 of the Constitution of India. Respondents 4 to 7 in the writ petitions were persons who had studied in Government Nursing Colleges and who had been called for interviews. The writ petitions were allowed as prayed for. As against that, respondents 4 to 7 filed Writ Appeal No.726 of 2006. The State filed Writ Appeal Nos.1223 and 1224 of 2006. Writ Petition No.28699 of 2006 was filed by students who had qualified in the three year diploma from private nursing colleges, who had been neglected totally by the Government and therefore, they sought for a mandamus to direct the respondents to consider the petitioners for appointment on the basis of seniority of their registration. Since the writ appeals had already been filed, this writ petition was directed to be posted along with the appeals. Similarly, Writ Petition No.35944 of 2006 was filed for a declaration that candidates qualified from private nursing colleges are eligible to be appointed in Government Hospitals in Tamil Nadu. Private nurses have also impleaded themselves as intervenors.

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2. Mrs. Nalini Chidambaram, Mrs. Hema Sampath, learned senior counsel made their submissions on behalf of the Private Nurses. The learned Advocate General made his submissions on behalf the State and Mr. A.L. Somayaji, learned senior counsel and Mr. N.G.R. Prasad, learned counsel made their submissions on behalf of the Government Nurses

3. According to the petitioners, they had obtained diplomas in General Nursing and Midwifery Course conducted by the Directorate of Medical Education; they were also registered with the Tamil Nadu Nurses and Midwives Council; some of the writ petitioners had also been working in private hospitals. Petitioners came to know that there were more than 3,000 vacancies; so, they thought that they would be recruited and appointed in these vacancies since they had registered their names; but to their shock, only those candidates who did their course in Government Nursing Colleges were selected and those who studied in private institutions, even though they were recognised institutions, were not selected. They are qualified as per the Madras Medical Subordinate Service Rules and they are entitled to be appointed. Denial of equal treatment is violative of constitutional norms.

4. The stand of the Government was that as per the Madras Medical Code, examinations are conducted for training selected candidates as nurses. The successful persons are admitted to the Nursing Course and on completion of the course are absorbed as nurses. At the commencement of the course, they execute a bond that they will serve the Government for a period of three years. The selected candidates are trained by the Government utilising the Government funds. They are paid stipend and considerable expenditure is incurred by the Government to train them. It is specifically stated that the appointments are made based on communal rotation and performance. This procedure of appointment has been followed all these years and if it is unsettled, the Government would not be in a position to keep their promise of providing employment to the nursing candidates who have passed out of Government Nursing Colleges.

5. We have heard the learned Advocate General for the Government, the learned senior counsel and the learned counsel appearing on behalf of the petitioners.

6. The Rules for the Training of Nurses in Government Hospitals in the State of Tamil Nadu are relevant :

"....."

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Rule-5 : Entrance examination and agreement – Candidates will be admitted on three months trial and towards the end of this period, a preliminary examination will be conducted by the Nursing Superintendent of Nursing Tutor of the Hospitals. Candidates who fail in the entrance examination in the first attempt will be allowed to continue their training for further period of one month and re-examination will be held at the end of the month. If they fail even in the second attempt, their training will be terminated forthwith.

Candidates who pass the entrance examination and found medically fit will be required to sign an agreement in the form given in the annexure IV to these rules to complete their training and to remain in service for a minimum period of three years after the completion of training, if required by the authorities.

Notes – (1) An interval of one month should be allowed to lapse between first and second entrance examination to be held for the benefit of the candidates who fail for the first time.

(2) Deserving nurse pupils who have failed twice in the entrance examination will be permitted to appear for the third time, after undergoing three months training at their own costs.

Rule-6 : Course of training and syllabus and contract period of Service – (a) The course of training for nurse pupils shall not exceed 3-1/2 years as shown below. The Nurse Pupils will be taught as per the syllabus prescribed by the Indian Nursing Council (Annexure 2 to these rules).

.....

Candidates may be allowed to seek employment elsewhere if the employment scheme are not provided to them by the Government within six months from the date of completion of their training."

.....

"Rule-16 : Appointment not guaranteed – Nurse Pupils who successfully complete their training and obtain their certificates will be eligible for appointment as nurse and they should registere themselves with the Tamil Nadu Nurses and Midwives Council immediately. Appointment cannot be guaranteed to all or any of the successful candidates. Recruitment will be made by the Director of Health Services and Family Planning, in accordance

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with the Tamil Nadu Medical Subordinate Service Rules."

The relevant provisions of the Madras Medical Subordinate Service Rules are as follows :

"General qualifications - A candidate for appointment by direct recruitment to the categories specified in column (1) of the table below must, as regards her age, satisfy the conditions specified in the corresponding entry in column (2) thereof.

TABLE

Category (1)	Age (2)
2. Nurses	Must not have completed the age of 32 years : Provided that a woman candidate who had been admitted to the training referred to in item (A) of the qualifications specified in column (2) of the Annexure for Nurses before the 22nd May 1935 shall be eligible for appointment if she has not completed the age of 40 years : Provided further that a woman candidate who had been admitted to the above training before the 30th September 1953, shall be eligible for appointment if she has not completed the age of 37 years : Provided that a candidate belonging to the Scheduled Castes or the Scheduled Tribes shall be eligible for appointment to the post of Hospital Social Workers if she has not completed the age of 40 years."

.....

"6. Probation - (a) Every person appointed to a category including those appointed under a contract shall, from the date on which she joins duty, be on probation for a total period of two years on duty within a continuous period of three years."

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Annexure 'A' to the said Rules reads as follows :

ANNEXURE

(Referred to in rule 5)

Category	Qualifications (1) (2)
Categories 1 and 2 –	
Head Nurses and Nurses (Women)	(A) A successful training for a period of not less than three years in general nursing of men and women and for a period of not less than six months in midwifery training in both cases to be undergone in an institution approved by the State Government under rule 37 of the rules made under sub-section (2) of section 11 of the Madras Nurses and Midwives Act, 1926, with qualifications prescribed for registration as nurse and maternity assistant under the said Act ; or A foreign training which is considered by the Director of Medical Services to be equivalent or superior to the above training or possession of a basic degree in Nursing from a University Grants Commission for the purpose of its financial grant. (B) A person possessing a basic degree in Nursing shall be considered for promotion as Head Nurse only if she has served for a total period of two years as a Nurse in a district headquarters hospital, a small mufassal hospital, a maternity hospital and a teaching general hospital. (C) But for appointment as a Nurse, a person who possesses the above qualifications or only the qualification in general nursing and who has rendered

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satisfactory military service, shall be preferred.

Provided that, if a person who has undergone training only in general nursing is not willing to undergo the training in Gynaecology and Obstetrics, all not be appointed to the service."

The relevant provisions of the Tamil Nadu Nurses and Midwives Act, 1926 are as follows :

"5. Registration of nurses, midwives, health visitors and auxiliary nurse-midwives - (1) The Council shall maintain a register of nurses, midwives, health visitors and auxiliary nurse-midwives and in such register shall be entered the names of all nurses, midwives, health visitors and auxiliary nurse-midwives, who have undergone the course of training and passed the examinations and fulfil the conditions prescribed.

(2) The register referred to in sub-section (1) shall consist of such parts and shall be maintained in such manner as may be prescribed."

"11. Rules by the State Government - The State Government may, after previous publication, make rules to carry out all or any of the purposes of this Act not inconsistent therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, they may make rules -

(a) regulating the conduct of the elections of members of the Council;

(b) regulating the conditions of admissions to the register;

(bb) prescribing the conditions and restrictions subject to which the Council shall enter in the register referred to in sub-section (1) of section 5 of the name of any person under sub-section (2) of section 5-A.

(c) regulating the conduct of any examinations which may be prescribed as a condition of admission to the register, and any mattes ancillary to or connected with such examinations;

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(d) prescribing the causes for which, the conditions under which and the manner in which, the nurses, midwives, health visitors, auxiliary nurse midwives, and dhais may be removed from the register and the procedure for restoration to the register or nurses, midwives, health visitors, auxiliary nurse midwives and dhais who have been removed therefrom;

(e) regulating the selection of the panels and the constitution of the Tribunal specified in sub-section (2) of section 8 and the procedure to be followed by the Tribunal;

(f) prescribing the fees to be paid in respect of an appeal under this Act;

(g) determining the manner in which all fees levied under this Act and all moneys received by the Council shall be applied for the purposes of this Act;

(3) All rules made under this Act shall, as soon as possible after they are made, be placed on the table of both Houses of Legislature and shall be subject to such modifications by way of amendment or repeal as the Legislature may make either in the same session or in the next session."

Similarly, the relevant provision of the Indian Nursing Council Act, 1947 read as follows :

"15-A. Indian Nurses Register - (1) The Council shall cause to be maintained in the prescribed manner a register of nurses, midwives, auxiliary nurse-midwives and health visitors to be known as the Indian Nurses Register, which shall contain the names of all persons who are for the time being enrolled on any State register.

(2) It shall be the duty of the Secretary of the Council to keep the Indian Nurses Register in accordance with the provisions of this Act, and from time to time, to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India."

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7. It was urged on behalf of the State that this is the practice that has been followed for several years and the State has incurred a huge expenditure in training the nurses on the expectation that they would serve the State and the appointments have been made only in accordance with the Tamil Nadu Medical Code.

8. The Madras Medical Subordinate Service Rules were read out and it highlighted that in respect of the appointments to all other categories it is stated that every person appointed to a category shall be on probation for a total period of two years etc., while in the case of nurses alone, the Madras Medical Subordinate Service Rules refer to every person appointed to a category, "including those appointed under a contract" and this would mean persons who have been trained and who have executed a bond as extracted above and appointed. It is also submitted on behalf of the State that an examination is conducted and only after that, the trainee nurses are chosen and the persons who join the private institutions are candidates who have failed the examination. Having failed in the examination, they cannot now claim that they are entitled to the same benefit or same treatment as those who had passed the examination and had been inducted as trainees, given training and appointed to the posts.

9. Learned counsel appearing for the Private Nurses submitted that the training undertaken by the trainee nurses and the private nurses are not different; the course content is the same. As far as practical training is concerned, all private nurses are also sent to Government Hospitals for training. The institutions where the private nurses have undergone their training are all recognised institutions and therefore, the clause in the Tamil Nadu Medical Subordinate Service Rules which prescribes the qualification of undergoing training "in an institution approved by the State Government" is unreasonable and it is neither fair nor just to exclude the private nurses. This would violate Article 14 of the Constitution and it is totally arbitrary and there is no rationale for such exclusion. Learned counsel submitted that the Madras Medical Subordinate Service Rules being a piece of subordinate legislation cannot be overridden by the Tamil Nadu Medical Code, which admittedly are executive instructions. Learned counsel submitted that the statistics would show that there are huge number of trainee nurses waiting to be recuited and if the State decides to accommodate all of them, then the private nurses would be permanently excluded from being appointed in Government Hospitals, which cannot be countenanced in law. The learned counsel submitted that when the Madras Medical Subordinate Service Rules are clear, it is not necessary for the petitioners to challenge the executive order and they are entitled to seek for a mandamus for appointment.

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10. The writ petitioners have come with a prayer for mandamus. The rules subject to which the Government Nurses have been given training and absorbed as nurses have not been challenged. Of course, it was contended by Mr. R.N. Amarnath that executive instructions can never override the Madras Medical Subordinate Service Rules framed under Article 309. However, the Madras Medical Code and the provisions thereunder which have been extracted above which deal with the manner in which these trainees enter into a contract and are taken in as nurses have been in vogue for many decades. The history of public health institutions in this Sate is over a century old. At that time, the Government thought out a well laid plan to start their own training institutions for nurses. With a view to attract the best talent, these institutions provided incentives for women to get training and service bonds were also obtained from them so that the training is utilised in Government Hospitals. During their inhouse training, they were imbibed with a spirit of public service. After Independence and the Constitution, the trainee nurses were taken in on the basis of communal roster and merit was the criterion for admission.

11. The entry into the category of nurses starts with the admission into a Government Training School. It is a composite scheme of recruitment, training and absorption exclusively for Government institutions. According to the State, if a person wants a posting in a Government Hospital, the entry point is an admission in the training institution run by the Government and there is no scope for any lateral entry. The candidates who succeed in the examination and are given training in Government institutions enter into an agreement to serve the Government for a minimum period of three years after completion of their training. Therefore, the Government provides these candidates rent-free quarters, free supply of electricity, paid stipend, which includes uniform allowance and therefore, public money is spent on them. The Prospectus for admission also says "nursing students who have successfully completed their training and obtained their diplomas will be eligible for appointment as nurses. The appointment cannot be guaranteed to all or any of the successful candidates. Recruitment will be made in accordance with the Tamil Nadu Medical Subordinate Service Rules". Every year, 1795 candidates successfully come out of these Government institutions and there are more than enough candidates waiting for appointment in nurse posts. The Government is bound to protect these trainees and as observed in (1995) 2 S.C.C. 1, having spent public money on them, the absorption of these trainee students cannot be said to be unreasonable.

12. It was vehemently contended on behalf of the State and Government nurses that the private nurses who have failed to get admission in the entrance examination conducted by the Government and who have thereafter got admission in private institutions cannot now seek parity with those Government nurses who have succeeded in the entrance examination and have got out and are entitled to be absorbed in Government service. In fact, Rule 5 of the Tamil Nadu Medical Subordinate Service Rules shows that the candidates will be admitted if they succeeded in the preliminary examination, i.e., the entrance examination conducted by the Government.

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If they failed in the entrance examination, then they are given training for a further period and a second examination is given. If they fail even in their second attempt, their training will be terminated forthwith. If the prayer of the petitioners for a mandamus to be appointed right away is granted, then it will nullify Rule 5 and a person who has failed and whose training got terminated thereupon can now go to a private institution, get training and seek equality with those candidates who succeeded in the entrance examination and got appointed. As regards Rule 6, it was submitted that if the Government does not provide them with any employment scheme within six months from the date of completion of their training, then they can seek employment elsewhere. Therefore, the Government cannot maintain these names in a permanent pool, thereby shutting the doors to the private nurses forever. Rule 6 cannot be cannot construe this way. Rule 6 is a provision in favour of the candidates. The Government cannot keep these candidates permanently in waiting without giving them employment and therefore, if a candidate, after waiting for six months, seeks employment elsewhere, then the Government cannot invoke the agreement and restrain such candidate from getting employment elsewhere and therefore this rule says that the Government cannot enforce the agreement against the candidates after the expiry of six months from the date of their completion of their training. This rule is actuallly in favour of the Government Nurses.

13. Rule 16 was also cited on behalf of the the Private Nurses to show that it is not as if the State promises the appointment to all, and if that is so, then the Government cannot seek refuge under the provisions of the Tamil Nadu Medical Code and deny the private nurses the right to be appointed. This submission is also to be rejected. Rule 16 would come to the aid of the Government if a mandamus is sought for by a Government nurse for a direction to appoint her. Then the Government can turn around and say that appointment was not guaranteed to all or any of the successful candidates in view of Rule 16 and therefore, all that they can expect is to be considered for appointment. When even the nurses who have been trained in the Government institutions and who have executed the bond to serve the Government for a period of three years would not be entitled to a mandamus in view of Rule 16, it is difficult to see how the private nurses who had failed in their attempt to secure admission by passing the Government entrance examination would be entitled to such a mandamus. Their right is much inferior to that of the Government nurses.

14. A large expenditure is incurred by the Government is spelt out in the counter and the private nurses also do not deny the fact that the Government has incurred the expenditure. Of course, it was contended on behalf of the private nurses that out of the 1745 students, 645 students are given stipends, but tuition fees is charged; 100 students are not given stipends, but the tuition fee is waived; but the rest of the 1000 students pay a nominal fees. But however, it is stated by the Government that the last category is no longer in vogue. It is also seen that the Government has not advertised the vacancies and called for applications. The vacancies have been filled up by absorption. For 50 years, this

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practice has held the field. This Medical Code has been the basis for filling up the vacancies of nurses for so long.

15. In (1995) 2 S.C.C. 1 [U.P. S.R.T.C. vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh], it was held as follows :

> "The material resources of this country are limited. Indeed this is so for every country. The resource-crunch is, however, acute for us; and so whenever and wherever public money is invested, it has to be seen that there is a proper utilisation of the same in the sense that the public ultimately gets benefit of the same.
>
> This prelude is to highlight the idea which we propose to focus as we proceed to bring home the need to make the investment in apprentice trainees useful to the society, which would be so when the training received by them is put to social use. We are putting this aspect of the matter at the forefront because one of the appellants namely, the U.P. State Road Transport Corporation (hereinafter "the Corporation") has made a grievance about some directions given by the Allahabad High Court to employ those who had received training in the workshop of the Corporation. The direction has been given mainly at the call of promissory estoppel which is not applicable according to the Corporation. We would agree with this stand of the Corporation; but then, another reason advanced for the direction is also spending of money on imparting the training to the apprentice, which aspect is relevant as already alluded, and which we propose to buttress further.
>
> From the aforesaid, it is clear that the training imparted is rather exhaustive and elaborate. Sufficient amount of money is also spent on the trainees by way of payment of stipend to them. What is more, there is an obligation on the employers to provide an apprentice with training in his trade in accordance with the provisions of the Act — Schedule V to the Rules containing details of the obligations; and the employer is also required to ensure that a person possessing prescribed qualification is place d in charge of training of the apprentices. The Act seeks to enforce these obligations on the pain of even prosecution, about which mention has been made in Section 30 of the Act.
>
> So the legislature did desire and make adequate provisions to see that the competent persons receive due training to cater to the need of increasing demand for skilled craftsmen on one hand and to improve the employment potential of the trainees on the other. Good amount of money, which would be public money in case of public bodies like the Corporation, is also spent on training the apprentices. Further, during the period of training, the apprentices are put under a discipline akin to that of regular e mployee inasmuch as Section 17 states that in all matters of conduct and discipline, the apprentice shall be

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governed by the rules and regulations applicable to employees of the corresponding category in the establishment in which the apprentice is undergoing training. Section 16 requires payment to the apprentice in case of injury due to accident arising out of and in the course of training, in accordance with the provision of the Workmen's Compensation Act, 1923, as modified by the Act. The Rules have dealt with the hours of work (Rule 12) and grant of leave (Rule 13) also.

The aforesaid provisions are sufficiently indicative of the fact that the training imparted is desired to be result-oriented; and the trainees are treated akin to employees. Even so, Section 22 of the Act states, and it is this provision which has been pressed into service by the appellants, that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment unless there be a condition in the contract to the contrary. The model contract form finding place in Schedule VI of the Rules echoes the voice of Section 22(1) in its second para. The Corporation has placed on record a model contract form entered into between it and the trainees which also states about the aforesaid non-obligation.

In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. N. Hargopal [(1987) 3 S.C.C. 308] would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

As per this decision, the trainees stand on a different footing from the direct recruits.

16. In (2003) 5 S.C.C. 341 Secy., A.P. Public Service Commission vs. Y.V.V.R. Srinivasulu], it was held thus :

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"A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through the Public Service Commission on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority meritwise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-à-vis others in the matter of actual selection."

The stand of the State is that the entire process is one composite scheme of recruitment, training and absorption, and not one of reservation for trainees. So, this decision will not apply.

17. In (1998) 7 S.C.C. 66 [National Buildings Construction Corpn. vs. S. Raghunathan], it was held as follows :

"The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

.....

As pointed out by this Court in Food Corpn. of India v. Kamdhenu Cattle Feed Industries 4 which has already been referred to above, the question whether the expectation and the claim is reasonable or legitimate is a question of fact in each case. It was also observed that this question had to be determined not according to the claimants' perception but in larger public interest.

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Incidentally in this case, the question of "legitimate expectation" was not raised in the petition and no foundation was laid in the pleadings for such a plea being advanced before the Court. Strangely, the High Court allowed this plea at the stage of argument and allowed the petitions only on the ground of "legitimate expectation" without the least realising that there was hardly any legitimacy in the claim of the respondents. In the absence of pleading and the affidavit of the respondents in support t hereof, the whole exercise done by the High Court cannot but be termed to be speculative."

The Private Nurses have not shown how legitimate expectation arises in this case. For over 50 years, only the Government Nurses have been absorbed. In fact, the private institutions are of recent origin and therefore, the question does not arise.

18. In (2002) 4 S.C.C. 510 [State of H.P. vs. Padam Dev], it was held as follows :

"We are also of the view that the judgment of the High Court cannot be sustained on the merits. The decision to make a special concession for Gopal Sahayaks in the matter of additional training as Veterinary Pharmacists was admittedly a policy decision. The framing of administrative policy is within the exclusive realm of the executive and its freedom to do so is, as a general rule, not interfered with by courts unless the policy decision is "demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution [Krishnan Kakkanth v. Govt. of Kerala, (1997) 9 S.C.C. 495]."

The legality of the policy decision cannot be decided where only a mandamus is sought for, and the policy followed till now has not been shown to be palpably illegal or arbitrary.

19. In 1987 (Supp) S.C.C. 587 [Thote Bhaskara Rao v. A.P. Public Service Commission], it was held thus :

"What is forbidden by the Constitution is discrimination between persons who are substantially in similar circumstances or conditions. An equal treatment does not arise as between persons governed by different conditions and different sets of circumstances. It is obviously permissible to classify persons into groups and such groups may be differently treated if there is a reasonable basis for such difference or distinction. Having regard to the difference in the nature of service under the Government and that of the other services, therefore, a classification based on that line cannot be struck down on ground

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of illegal discrimination. The proviso in question must be held to be valid and effective."

In (1995) 2 S.C.C. 135 [Anant Madaan v. State of Haryana], it was held as follows :

"In the present case, the reservation which has been made on the basis of candidates having studied for the preceding three years in recognised schools/colleges in Haryana is in respect of these 85% of seats. It excludes 15% seats which have to be filled in on an all-India basis. This eligibility criterion, therefore, is in conformity with the decisions of this Court referred to above. It cannot, therefore, be considered as arbitrary or unreasonable or violative of Article 14 of the Constitution."

We have already seen that the Government Nurses and Private Nurses stand on an entirely different footing.

20. In (2006) 4 S.C.C. 1 [Secretary, State of Karnataka vs. Umadevi], inter alia, it was held that the State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts and that "transgression of the rules of regular appointment" cannot be encouraged.

21. The decision rendered in Umadevi's case will not apply to the Government Nurses since their appointments are not ad hoc. It is in accordance with the provisions of the Madras Medical Code and this procedure has been in vogue for several decades and their appointment is also in accordance with the Madras Medical Subordinate Service Rules since they are all candidates who have undergone training in Government institutions. Equality cannot also be claimed between Government Nurses and Private Nurses since it is very apparent that they fall into two groups. Considerable money is spent on the Government Nurses for their training, for which they execute a bond undertaking to serve the Government for a period of three years and as and when their turn comes, in accordance with the roster and their registration, they are absorbed into Government service. They are all candidatse who had appeared for the entrance examination conducted by the Government and come out successfully. On the other hand, he Private Nurses are those candidates who did not appear in the entrance examination or if they had appeared, had failed and had pursued their studies in private institutions. The fact that the course content in the private institutions and the Government institutions is the same is hardly material. The rules provide that if a student fails after the second attempt, the training is terminated forthwith and therefore, all the benefits and consequences which accrue from the training cannot also be asserted as a matter of right by such failed students. Having failed in the entrance examination and having pursued their studies in private institutions, they cannot now

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say that they are entitled to the same treatment as the students who had passed the entrance examination and had pursued their course in Government institutions. A reading of the bond executed by the Government Nurses also shows that they subject themselves to certain terms and conditions and the Private Nurses have no such liability.

22. The Madras Medical Code has not been challenged till date. The judgment in (1995) 2 S.C.C. 1 (cited supra) specifically answers the question with regard to special treatment to persons on whom public funds have been expended. In (2003) 11 S.C.C. 146 [Saurabh Chaudri v. Union of India], it was held as follows :

> "The courts are normally reluctant to issue any direction to the Central Government for making law. Following our practice, we refrain ourselves from issuing any direction in this regard. We hope and trust that the Central Government expeditiously considers making of a legislation or taking such steps as are necessary in this behalf keeping in view the requirement of coordination in higher education in terms of Entry 66 List I of the Seventh Schedule of the Constitution of India.
>
> .....
>
> The Court while adjudicating upon the constitutionality of the provisions of the statute, may notice all relevant facts whether existing or conceived. This Court may therefore notice the following :
>
> (i) The State runs the universities.
> (ii) It has to spend a lot of money in imparting medical education to the students of the State.
>
> (iii) Those who get admission in postgraduate courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.
> (iv) The criterion for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for the last about two decades.
> (v) Even those States which defied the decision of this Court in Dr Pradeep Jain's case had realized the need for institutional preference.
> (vi) No sufficient material has been brought on record for departing from this well-established admission criterion.
> (vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS course. But together

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with the local students, 15% students who had competed in all-India entrance examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in Dr Pradeep Jain case 3 is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation."

23. It is open to the Government to take a decision and in fact, the learned Advocate General fairly acknowledged that this Code came into effect at a time when there were not many nursing institutions, at any rate, there were hardly any private institutions. Now where there is a clamour for admission to nursing courses, the Government will have to take into account the changes that have taken place in the last 100 years. We cannot direct the State to make an amendment in this regard. However, the State may consider making a provision which will ensure that the opportunity to be appointed as a Government Nurse is not foreclosed to students who have pursued their studies in private institutions, while safeguarding the position of Government Nurses. Many documents were also produced to show that the private institutions were all registered and recognised.

24. The selection process was not initiated. It is the categoric statement of the Government that there was no advertisement. It is also their case that these students who had been trained for Government service are still waiting in queue and therefore, the appointment would be given to those on whom public money has been spent. This course is not strictly akin to apprentices. According to the State, this is an integrated, composite course of education and it starts when the student passes the entrance examination. The judgment in (1995) 2 S.C.C. 1 (supra) also clearly says that the two classes are different. Therefore, the finding that the Private Nurses are entitled to be treated as equal and therefore entitled to a mandamus cannot be accepted, especially since even those who are trained are not entitled to a mandamus for as a matter of right.

25. It is also relevant to note that some of the Private Nurses have now filed writ petitions challenging the validity of the rules subject to which Government Nurses are appointed. In the present case, since only a mandamus was sought for, the counter filed by the Government did not address this issue and therefore, even while we were hearing the matter, we suggested to the counsel appearing for the Private Nurses that they may withdraw their writ petition with liberty to file a fresh one. But they did not want to do so. However, it is now stated that they have also filed a writ petition. All the contentions raised here can be raised by

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them in that writ petition. Any observation made in this judgment is only to underscore the position that a mandamus, as sought for, cannot be issued in these cases. But as regards the manner in which the two groups are entitled to be treated inter se and the questions whether the executive orders run contrary to the statutory rules or whether the executive orders only fill up gaps where the statutory rules are silent, and whether the words "including those appointed under a contract" refer to the bond executed by the Government Nurses, are all matters which can be raised and dealt with in the said writ petition.

26. For all these reasons, the writ appeals have to be allowed and they are accordingly allowed since the mandamus prayed for cannot be granted. Consequently, the writ petitions are dismissed. However, there will be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.

ab

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   Health & Family Welfare Department,
   Govt. of Tamil Nadu,
   Fort St. George, Chennai-9.

2. The Director of Medical Services,
   Teynampet, Chennai-18.

3. The Registrar
   The Tamil Nadu Nurses and Midwives Council,
   Chennai-4.

4. The Director,
   Rural and Medical Service,
   Teynampet, Chennai-6.

5. The Joint Director,
   Health and Welfare Service,
   Teynampet, Chennai-6.

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6. The Director of Medical Services,
   Nursing Section,
   Health Department,
   Secretariate, Chennai-9.

+2 ccs to Mr.R.Subramanian, (Sr.No.29516)

+1 cc to Mr.Gladys Daniel, (Sr.No.29137)

+1 cc to Mr.V.Jeevagiridharan, (Sr.No.29136)

+1 cc to Mr.S.Saravanakumar, (Sr.No.30139)

+1 cc to Mr.Government Pleader (Sr.No.29268)

BS(CO)
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